

1 understanding as to whether Grace
2 provided indemnification to BNSF for any
3 personal injury or death that resulted
4 from Grace's operations of the suspension
5 bridge and loading dock?

6 MS. HARDING: Object to the
7 form.

8 MR. LIESEMER: Object to the
9 form of the question.

10 THE WITNESS: Yes.

11 (Hughes-4 marked for
12 identification at this time.)

13 BY MS. CASEY:

14 Q. Take a look at exhibit
15 Hughes-4 for me, please.

16 A. Sure.

17 Q. Do you recognize this
18 document?

19 A. I think I have seen it
20 before.

21 Q. Do you know what this
22 document is?

23 A. Based on my review this
24 afternoon, it is an agreement between

1 purchase or obtain insurance in its own
2 name to insure its indemnification
3 obligation to BNSF?

4 MS. HARDING: Object to
5 form.

6 THE WITNESS: I don't know.
7 BY MS. CASEY:

8 Q. And then moving on to
9 paragraph 9, are you aware of any
10 policies that were purchased for BNSF in
11 accordance with paragraph 9 of this
12 agreement?

13 A. As I said, I am not sure I
14 have seen any policies. I do recall that
15 there is correspondence in the file that
16 would indicate that there may have been
17 policies purchased.

18 Q. Have you seen any
19 certificates of insurance indicating that
20 policies have been purchased?

21 A. Not that I specifically
22 recall.

23 MS. CASEY: Okay. On the
24 record real quick, I am going to

1 a break so I have time to read all
2 the documents that have been
3 marked and just take a ten-minute
4 break?

5 MS. CASEY: Yes.

6 MS. HARDING: I want to make
7 sure that I am making my proper
8 objections. Thanks.

9 (There was a break from 2:43
10 p.m. to 2:57 p.m.)

11 THE WITNESS: Before we go
12 further, in reviewing the
13 documents here, I think I
14 misspoke. I had it reversed in
15 looking at the correspondence in a
16 couple of things you said.

17 The certificates of
18 insurance and the correspondence
19 from 1961, my understanding is
20 that there is evidence that Grace
21 purchased insurance for the
22 benefit of the Burlington Northern
23 related to the operation of the
24 loading facility out in Libby,

1 Montana.
2 I haven't seen -- I am not
3 familiar with the fact that
4 Burlington Northern was
5 specifically added as an insured
6 to Grace's own general liability
7 policies, and I think I had that
8 reversed when we were speaking a
9 moment ago.

10 BY MS. CASEY:

11 Q. Is it your understanding
12 that to the extent any policy was
13 purchased naming BNSF as the insured,
14 that it is the subject of a settlement
15 agreement with the insurers and Grace?

16 MS. HARDING: Object to
17 foundation to the extent that you
18 know.

19 MR. SCHIAVONI: Vague and
20 ambiguous.

21 THE WITNESS: I would have
22 to look at the insurance
23 agreements themselves.

24 BY MS. CASEY:

1 MR. LEWIS: He testified
2 after a break that Grace purchased
3 independent policies that provided
4 coverage to BNSF.

5 BY MR. LEWIS:

6 Q. That was your testimony,
7 correct?

8 A. I don't think that's what I
9 testified to. I think that prior to the
10 break, I had testified that there were
11 two -- it is my understanding there were
12 two allegations by BNSF of possible
13 insurance coverage related to the loading
14 facility at Libby, Montana in the
15 railroads, the right-of-way, and that I
16 had testified beforehand that I had heard
17 and was aware of documents and letters
18 concerning the existence of support for
19 the allegation that they had been named
20 as an additional insured under the Grace
21 comprehensive general liability policies.
22 And I think I corrected that
23 and said that the letters and the
24 information I was talking about indicated

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1 that there were policies that Grace had
2 purchased and that -- for BNSF rather
3 than being named as additional insured
4 under the Grace policies.

5 Q. That's my understanding of
6 your testimony, sir. So Grace purchased
7 policies that covered BNSF, correct?

8 MR. SCHIAVONI: Objection.
9 That's not what he testified to.

10 THE WITNESS: I haven't seen
11 the policies. I said I was shown
12 correspondence, and the
13 correspondence I was referring to
14 that I had seen before indicated
15 that there were policies of that
16 kind. But I hadn't seen the
17 policies. I hadn't seen the
18 policies.

19 BY MR. LEWIS:

20 Q. You had been identified as
21 Grace's 30(b)(6) designated witness on
22 the subject of these insurance policies.

23 Is it your testimony now --

24 A. Well, I testified --

1 Q. Well, I am asking -- no, I
2 am asking you what you know about that.

3 From your own knowledge, did
4 Zonolite or Grace, or and Grace, agree to
5 indemnify the railroad contractually for
6 liability relating to that siding in
7 Libby?

8 MS. HARDING: I will object
9 on foundation to the extent you
10 know.

11 MR. LEWIS: If he doesn't
12 know, he can say he doesn't know.

13 THE WITNESS: I don't know.
14 I would have to see a document,
15 this document and certainly
16 correspondence which would imply
17 that. But I don't see anything
18 directly evidencing that kind of
19 agreement between Grace, Zonolite,
20 and the railroad.

21 BY MR. LEWIS:

22 Q. Did Zonolite agree to
23 purchase insurance at any time to
24 provide -- to provide coverage for BNSF,

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1 if you know?

2 MR. SCHIAVONI: Objection to
3 form, no foundation.

4 THE WITNESS: Again, there
5 are documents that would indicate
6 that that was the case, but I
7 haven't seen any of the policies.

8 BY MR. LEWIS:

9 Q. Does Grace have copies of
10 the insurance policies?

11 MS. HARDING: I will object
12 to the form.

13 THE WITNESS: Grace has
14 copies of insurance policies.

15 BY MR. LEWIS:

16 Q. We have requested those, and
17 Grace has not provided those to us.
18 Where are those policies kept?

19 MS. HARDING: Objection to
20 form. I think you asked him does
21 Grace have copies of insurance
22 policies, and he said yes, we have
23 copies of insurance policies.

24 Secondly, we have no